

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claim 1 has been amended to limit the particle size of the sugar to 70 µm to about 1 mm, and to clarify that the coating material is transparent. Support for 70 µm can be found in Examples 1, 2, 4 and 5 of Applicants' specification. Support for the transparent coating material can be found in the Examples, specifically at page 12, line 23, page 16, line 8 and page 17, line 20, as well as Tables 1 and 2.

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 1-3, 5-15, 17, 18, 20-22, 24-27 and 29-31 under 35 U.S.C. §103(a) as being unpatentable over Kondo et al. and as further evidenced by Bailey's, as well as the rejection of these claims under 35 U.S.C. §102(b) as being anticipated by Kondo et al. and as further evidenced by Bailey's, are respectfully traversed.

With regard to both rejections, the Examiner relies upon Kondo et al. for the reasons set forth in the Office Action of January 5, 2004. The Examiner admits that the claims differ from Kondo et al. in the recitation that the fat has a particular SFI (solid fat index) at two different temperatures. The Examiner relies on Bailey's to show the melting point of coconut, cocoa and palm kernel oil. The Examiner asserts that even though the specific high and low SFI values are not shown in Kondo et al., one of ordinary skill in the art would have anticipated that the SFI values of Kondo et al. fall within the ranges set forth in the claims because the high and low temperature SFI values fall on both sides of the melting point of the fat. The Examiner also states that the particle size of Kondo et al. falls within the range set forth in the claims, and that the aspect of a "transparent" appearance similar to a glaze is not a part of the claims.

However, Applicants' have amended claim 1 to require that the particle size of the sugar is 70 µm to about 1 mm and that the coating material is transparent. Therefore, the present invention provides a coating material characterized in that (a) the main components are an oil and fat and a sugar, (b) the coating material contains coarse particles of a solid component other than oil and fat

having a particle size of 50 μm or more, (c) the content of a solid fat in said oil and fat is 45% or more at 20°C and 15% or less at 35°C, (d) the sugar used has a particle size of 70 μm to about 1 mm, (e) the coating material is that for confectionery/ bakery use and (f) the coating material is transparent. Furthermore, Applicants' transparent coating material has an appearance similar to a glaze and a fondant, a crispy eating feeling and a significantly improved sticky property. (See page 2, lines 17-25 and Tables 1 and 2 of Applicants' specification).

Kondo et al. alone, or as further evidenced by Bailey's, do not teach or suggest the combination of the characteristic elements (a) through (f) outlined above, as will be discussed below.

Kondo et al. disclose a non-hydroscopic icing composition comprising sugar, fat and an emulsifier as the main components, wherein 80% by weight or more of said sugar is particles passing through a 63 μm mesh size sieve and 50% by weight or more of said sugar is particles having a size from 45 μm to 63 μm and the sugar content in the icing is 50% by weight or more (see Kondo et al., claim 1).

However, Applicants have amended the claims to require that the particle size of the sugar is 70 μm to about 1 mm. There is no teaching in Kondo et al. directing one skilled in the art to use Applicants' claimed particle size (above characteristic element (d)). On the contrary, Kondo et al. clearly teach away from Applicants' claimed particle size by teaching a particle size of less than 63 μm . "In the icing composition of the present invention, 80% by weight or more, preferably 90% by weight or more and still preferably 99% by weight or more, of the sugar particles pass through a 63 μm mesh size sieve." (See Kondo et al., column 2, lines 47-50). Additionally, Kondo et al. teach that the use of large particles would be a detriment to their invention, by making the texture of the icing not smooth but coarse (see column 2, lines 64-65). This is in compete contrast to Applicants' invention, in which sugar particles having a particle size of 70 μm to about 1 mm can be used in the coating composition.

Additionally, Kondo et al. do not teach or suggest that the coating material contains coarse particles of a solid component other than oil and fat having a particle size of 50 μm or more (above characteristic element (b)). Nor do Kondo et al. teach that the coating material has a transparent

appearance and a crispy eating feeling for confectionary/ bakery use (above characteristic elements (e) and (f)).

The Examiner has relied upon Bailey's to show the melting points of coconut, cocoa and palm kernel oil. However, Bailey's does not remedy the deficiencies of Kondo et al., discussed above.

Therefore the present invention is clearly patentable over Kondo et al., as further evidenced by Bailey's.

In view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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